

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EVA L. SPENCER and U.S. POSTAL SERVICE,
PRIORITY MAIL ANNEX, Romulus, Mich.

*Docket No. 96-935; Submitted on the Record;
Issued January 26, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof to establish that she sustained tendinitis of the right wrist in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

Appellant filed a claim on July 26, 1995 for tendinitis of the right wrist which she attributed to keying mail on a small parcel sorter. The Office, in a decision dated November 1, 1995, denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish an injury causally related to factors of her federal employment. Appellant requested reconsideration and submitted a statement describing the factors of employment to which she attributed her condition. By decision dated November 22, 1995, the Office declined to review its prior decision on the grounds that the evidence submitted with the reconsideration request was not relevant.

The Board has duly reviewed the case record in the present appeal and finds that appellant did not meet her burden of proof to establish that she sustained tendinitis of the right wrist in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim, including that fact that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.²

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant.³ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁴ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty⁶ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷ The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.⁸

In the present case, appellant alleged that she sustained tendinitis of the right wrist due to keying mail on a small parcel sorter. Although the Office accepted the occurrence of the claimed employment factors, appellant did not submit sufficient medical evidence to establish that she sustained an occupational injury due to these factors.

In support of her claim, appellant submitted a report dated July 13, 1995 from a physician who diagnosed De Quervain's tenosynovitis of the abductor pollicislongus tendon and found that appellant was unable to work from June 29 until July 14, 1995. The physician, however, does not

³ *Jerry D. Osterman*, 46 ECAB ____ (Docket No. 93-1777, issued February 2, 1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁴ The Board has held that in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed to establish a claim; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384-85 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

relate appellant's diagnosed condition to employment factors and thus the opinion is of little probative value.⁹

Appellant further submitted a form signed by a physician which indicated that she should avoid overuse of her thumb and wrist. As this report contains no diagnosis or rationalized causation finding, it is insufficient to meet appellant's burden of proof.

An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between her condition and her employment.¹⁰ To establish causal relationship, appellant must submit a physician's report in which the physician reviews that factors of employment identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed condition.¹¹ Appellant failed to submit such evidence and therefore failed to discharge her burden of proof.

The Board further finds that the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Act. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by written request to the Office identifying the decision and the specific issue(s) within the decision which the claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

“(i) Showing that the Office erroneously applied or interpreted a point of law, or

“(ii) Advancing a point of law or fact not previously considered by the Office, or

“(iii) Submitting relevant and pertinent evidence not previously considered by the Office.”¹²

⁹ See *Charles H. Tomaszewski*, 39 ECAB 461 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

¹⁰ *William S. Wright*, 45 ECAB 498 (1993).

¹¹ *Id.*

¹² 20 C.F.R. § 10.138(b)(1).

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.¹³ Evidence that repeats or duplicates evidence already in the case record has no evidentiary values and does not constitute a basis for reopening a case.¹⁴ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.¹⁵

In the present case, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that she sustained tendinitis of the right wrist causally related to factors of her federal employment. In support of her request for reconsideration, appellant submitted a statement dated October 18, 1995 describing the factors of employment to which she attributed her condition. The relevant issue in the instant case, however, is whether the medical evidence establishes that appellant's diagnosed condition is causally related to factors of her federal employment. The submission of evidence which does not address the particular issue involved does not constitute a basis of reopening a case.¹⁶

As appellant has not established that the Office erroneously applied or interpreted a point of law, advanced a point of law or fact not previously considered by the Office or submitted relevant and pertinent evidence not previously considered by the Office, she has not established that the Office abused its discretion in denying her request for review of the November 1, 1995 decision under section 8128 of the Act.

¹³ See 20 C.F.R. § 10.138(b)(2).

¹⁴ *Daniel Deparini*, 44 ECAB 657 (1993).

¹⁵ *Id.*

¹⁶ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

The decisions of the Office of Workers' Compensation Programs dated November 22 and November 1, 1995 are hereby affirmed.

Dated, Washington, D.C.
January 26, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member